G. R. S. App. F. IX-4]

Previous References.

194

(Law

File No. 58-38.

Serial Nos. 1—4

Later References.

Law 167-43

PRESERVED

GENERAL AND REVENUE SECRETARIAT

Serial Nos. Formula

Part B for Year 41

SUBJECT.

R.A. 24 / 38-39 on the file of the High Court of Mysore

(B. Seetharamachar vs. Govt.)

2019
P

General and Revenue Secretariat Law File No. of 1938. [App. F. III—2

Serial No.

From
The Director of S. O. T.
Letter No. 172 of 21.9.1938.
Fds copies of letters from the Dir of Ind & Commerce - and his office file - in respect of the Regular appl filed by Mr. Sitaramachar in the High Court - and solicits instructions.

Hearing 27-9-38

1) The file will be sent to G.A. un-officially and he will be requested to appear tomorrow.

26/9/38.

From
The Govt Advocate
D.O. No 284, dated 27-9-38
Requests in the circumstances stated, orders of Govt in the matter of opposing the application filed by the appellant for the condonation of delay in filing the appeal

2) P. U. D. I is submitted for perusal in which it is reported that the judgment-debtor Rao (B. Sitaramachar) has filed an appeal in the High Court against the order of the Dist. Judge, B'le

R. A. 24/38-39 High Court of Mysore
B. Sitaramachar -- Advt

in Execution Case No. 1/34-35 directing that the Insurance Amount of Mr. B. Sitaramachar be got and sent to the decree holder (Dir. of Ind: & Commce). There seems to have been some delay in filing the appeal which is evidenced by the affidavit filed on behalf of the appellant (Flag Z)

3) In P. V. D. II the Govt Advocate seeks instructions in the matter of opposing the ~~application~~ said affidavit.

4) Since the amount involved is large it seems to be desireable

K.A. 24/38-39. High Court of Mysore - (B. Sitaramachar vs Govt.)

2127

General and Revenue Secretariat | File No. Law | of 193 | [App. F. III—2

Serial No.

8) A draft D.O. Ltr submitted for approval to the Govt. Advocate

B. 10/10

9) Done now BKR 10.10

Issued D.O. No. P 1740, dt 11-10-38

10) Submitted after issue for favour of sending the file to the Addl. Secy:

B. 11/10

BKR 11.10

Addl Secy)

Please see the last page (para

11) Asst. Secy: was pleased to say that oral instructions have been given to the Govt. Advocate regarding this Case, and that no further action is necessary at present.

13) The Govt. Advocate has asked for the return of the records. (Please see last para of P.U.D. II). A draft forwarding them is submitted for approval

B. 13/10

14) Done BKR 13.10

Issued no. P 1833, dt 14-10-38

TYPING SECTION 14. OCT. 193 GENL. & REV. SECTT.

Sec C 14-10-38

R. A. 24/38-39 H. Court
(C. Sitaramachar vs Govt)

General and Revenue Secretariat

Law File No. of 193

From

The Govt. Advocate

D. O. Letter No. 328 dt 25-10-38

Requests orders of Govt for his appearance in the above case

(5) A draft G. O. sanctioning the services of the G. A. is put up for

(6) Maybe sanctioned

BKR
25-10

Asst Secy)
2nd Member)

264/38
P

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, ...28th October.....*1938*.

29/10/38 DKR

FROM

MIRLE. N. LAKSHMINARANAPPA, ESQ., B.A., LL.B.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

Law 58-38-03

To

The Additional Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

SIR,

Adverting to Government Order No. P.1974-7/Law. 58-38-2, dated the 26th October 1938, I have the honor to state that in Regular Appeal No. 24 of 1938-39 on the file of the High Court of Mysore, (B.Sitaramachar VS. The Government of Mysore) the Application of the Appellant for condoning the delay in filing the Appeal, came on for hearing this day, and that after hearing both sides the delay in question was condoned.

for perusal.

21 DKR 31.10

I have the honor to be,

Sir,

Your most obedient servant,

Sml C 31-10-38

Mirle Lakshminarayanappa

Government Advocate.

Iress : "SANDAL" MYSORE.
Telephone No. 362.

GOVERNMENT OF MYSORE.

No. 227
Encl.

Office of the Director,
Sandalwood Oil Factory, Mysore.

Dated 2nd November 1938

FROM

S. G. SASTRY, Esq., B.A., M.Sc. (Lond.),
Director, Sandalwood Oil Factory.

To C. Subrahmanya Aiyar, Esq., B.A., B.L.,
Additional Secretary to Government,
General Department, Bangalore.

SIR,

With reference to G.O. No.P.1974-7/Law.58-38-2 dated 26th October 1938 regarding appeal No.24/38-39 (B. Sitaramachar Vs. Government of Mysore), I have the honour to request that the file of correspondence sent under cover of this office letter No.172 dated 21.9.1938 may kindly be caused to be returned to me for reference.

I have the honour to be,
S i r,
Your most obedient servant,

Director.

5. NOV. 1938

Issued no P 2239, dt 9-11-38

K. A. 24/38-39 High Court
(B. Sitaramachar v Govt)

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Letter No. 495, dt 13-12-38
returns the file & papers connected to the case
A draft to the Dist. & S.J. [illegible]

R. A. 24/38-39 High Court.
(B. Sitaramachar vs Govt)

File No. Law 58 of 1938.

General and Revenue Secretariat

records received from the G.A. is put up for approval

14/12

14.12

Dtd no P 3074, dy 16-12-38

Sec C
16-12-38
Extracted from Annual Rpt
28/10/38. Delay condoned and appeal to be posted for

Letter no 154 dated 27th August 1940 from the Govt Advocate stating that the above Appeal was allowed with costs and that the copy of judgment will be sent as soon as the same is received in his office.

D.O. Letter no 168 dated 27th August 1940 from the Govt Advocate stating that the decision given in the Appeal leaves untouched the right of the Govt to deduct this amount (the insurance amount) due to them - in part realisation of the enormous sum now owed by the judgment debtor.

26) P.U.D I is submitted for perusal. The point raised by the Govt Advocate in his D.O. letter, P.U.D II is submitted for orders.

30/8

27) Await 5th Copy called for vide para 4 put up by the Pli

3
30/8

Letter no 294/ dated 29th October 1940 from the G.A. forwarding copy of Judgment in the above case.

28) Submitted for orders with reference to para 26 supra

29) On perusal of the

13/11

(Sd Secy)

R.A. 24 of 38-39. on the file of the High Court
(B. Sitharamachar Vs Govt)

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

~~For perusal~~.

30) The file 3644-6-G.7.78-23-2. of 7th Jan 1924. and also G.O no 7L 5433-5/7. 7.29-23-14 dated 1st April 1924 may be put up.

Hm
2/1/41.

3
2/1/41

31) The file containing G.O. no. ~~7L~~. 5433-5/729. dated 1st April 1924 referred to in para 30/supra is put up.

32) In regard to the file (containing G.O.) 3644-6-G.7.78-23. dated 7th Jany 1924, it is submitted that the same is stated to have not been received in the records.

33) It is for orders if the file may be sent to the Financial Branch for putting up the file G.7.78.23-2 referred to in para 30 supra.

Hmm
10/1

3
10/1/41

34) (The Genl Asst)
File No. C.S. 42-22 Sls 6-12, 15 & 16 Contains the G.O. referred to above. or may be obtained from the Records.

By
16/1

(1 Sls) Both the references noted in para 30 supra are put up.

By
Hmm
16/1

Prot^n Br)

WD 0544—GPB—30,000—2-9-38

Law Secretary)

3
23/1

File No.

6) The Government Advocate has, in his D.O. letter dated 27th August 1940, suggested that the Government may adjust the amount due on the life insurance policy of Mr.B. Sitaramachar towards the decree amount due to the Government from him. He assigns two reasons for doing so:

7) (1) When the contract of insurance with the judgment debtor was effected, Rule 23 entitled the Government to this deduction in their favour and he says that the restriction since placed upon the kind of deduction by G.O. dated 7th January 1924 is merely an interpretation by one party (Government) to the contract to which there has been no assent by the other party. He is therefore of the opinion that the judgment debtor cannot contend that he is entitled to its benefit since the contract has not been validly modified.

8) (2) The second reason assigned by him is that the rule was meant to apply to officers, mostly to those not in active service but on the retired list of whom the judgment-debtor could not be one since his pension was withdrawn for bad conduct. Finally he says that equity, justice and law are all in fav of making the deduction.

39) It has to be noticed that the High Court in R.A.No.24/38-39 have held that the insurance amount cannot be attached. payable to Mr.Sitaramachar. The first ground on which the Government Advocate suggests that we have power to deduct the amount cannot be of much avail. Rule 23 of the Rules for the Mysore State Life Insurance (Official Branch) lays down that the payment under this rule shall be subject to deduction of an

amount that may be due to Government by the insured. This rule has been the subject matter of discussion in the file relating to the payment of the insurance amount to the widow of late Mr.T.Lakshminarasimha Rao, Auditor, Mysore Railways, and after an elaborate discussion the Government have ordered as follows:-

"Government consider that it is not right to make the assured amount liable for debts contracted by an insured officer otherwise than in his official capacity. The reservation in Rule 23 of the Insurance Rules, providing for 'deduction of any amount that may be due to Government by the insured' should be understood as applying only to the amounts payable by an Insured to Government in his official capacity and not to those which he may owe to Government as a private person."

Mr.Sitaramachar retired from service in the year 1920 and he took up the agency for Government in the year 1924. At the time the agency was given to him, he was not an officer of the Government and the liability did not arise when he was an official. Such being the case it becomes quite clear that Rule 23 cannot be applicable to his case. This restriction ~~was~~ is not ~~nothing~~ one ~~new~~ that is ~~was~~ imposed since the date of the contract, but only is an interpretation of the rule that existed at the time the contract was entered into. That is, the Government have come to the conclusion that in their view Rule 23 cannot apply to the amounts due on contracts entered into by private parties with the Government The assent of the other party (Mr.Sitaramachar) is not necessary at all.

40) Similarly, the second ground suggested by the Government Advocate cannot also apply, as the rule does not make any such distinction among the officer as suggested by him. If this distinction were corre perhaps, the High Court itself would have allowed the

If the interpretation of law is favourable to
Mr.Sitaramachar, no question of equity or justice
could help the Government in making the deduction.

41) The other two suggestions of the G.A. for amending clause (p) of Sec.60 (1) of the Code of Civil Procedure are not really necessary as that would take away the usefulness of compulsory insura of the Official Branch, since the insurance amount is intended to serve the purpose of a family provision and has been exempted from the civil court attachment. Moreover from the year 1912, the law in the State has been that bonus payable to a perso under the Mysore State Life Insurance Rules is exem from attachment even after it is drawn subsequent to the person's death by his widow and deposited h her in a bank in her own name, as laid down by the High Court in 17 M.C.C.R.121. There does not seem to be any need or justification to amend the law which has stood well for the last 29 years, as suggested by the G.A.

General and Revenue Secretariat

R.A no 24/38-39 on the file of the High Court (Insurance Case)
File No. of 194 [App. F. III-2

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Department may, I think, be called for with refere to the previous decisions

5/2/41
JV 5/2

Hm 6/2/41.

3 6/2/41

Hm 13/2.

3 13/2

Submitted for orders if the file may be sent officially to the Secretary, Insurance Departmen remarks with reference to para 43 Supra may be sent

Law Secretary 3 17/2

Hm 18/2.

P 94240 dated 18/2/41 3 18/2

Forwarded with compliments to the Secretary Insurance department for remarks with reference to para 43 Supra

Assistant Secretary to Govt
Law Department
18/2/41

10716 Rev 7-3-41
Returned with compliments.

There has been only one case bearing on the poin viz., that of Mr. T. Lakshminarasimha Rao on which the orders of Government were issued on 7-1-1924 interpreting Rule 2... It seems desirable to keep t

to the present interpretation of the rule read in conjunction with the present decision of the Chief Court in the case under reference. in the interest of the insuring officials in service. Any alterat as suggested may have the effect of creating a distrust or scare in their minds.

K.A. 24 of 38-39 on the file of the 4th Of Mysore (B-Seetharamachar vs Govt)

General and Revenue Secretariat.

File No. of 19 [App. F. III-2

Serial No.

Whether govt. should be prompted to regard him as one having no reasonable control over his own capacity of disposal of his own property, as in the case of legally incapacitated persons & Estate even upon himself the duty of protecting his kith & kin for which no doubt the money is intended when the party is himself alive & quite capable of taking care of them.

Law Sec'y (W.C.) 5.3.41

Saw Sir I remember the instructions are that the Advocate General may be asked to oppose the application. Advocate informed.

8/3/41

The High Court have held that the insurance amou payable to Mr.Sitaramachar cannot be attached. The only provision under which the power is given to Government to appropriate the insurance amount toward their dues is Rule 23 of the Mysore State Life Insurance Rules (Official Branch). This rule has been interpretted on the previous occasion by the Government itself that it is not right to make the assured amount liable for debts contracted by any insured officer otherwise than in his official capacity. As admittedly the liability arose not on any act done by Mr.Sitaramachar in his official capacity as he ceased to be an officer of Government long before

:he agency was entrusted to him, the Government
:annot exercise their power of deduction under
Rule 23. If this view is ~~correct~~ accepted other conside-
'ations suggested by the Financial Secretary
lay not help the Government to empower them to adju
:he amount towards the dues. Even the Advocate-
leneral does not base his opinion on considera
:ions suggested by the Financial Secretary. I
lm still of the opinion that the Government have
lo power to act under Rule 23 in this case.

'IRST MEMBER)

Is there any application still pending before the ~~H.C~~ ? If so the Cy. A may urge the view expressed in his letter and let us know the result

Cy. 7-29-23 & 9/24
but up with this file has
been taken out for
navy no 2606/21
Kiel
17/1

IN THE HIGH COURT OF MYSORE AT BANGALORE.

MONDAY, the 26th day of August 1940.

PRESENT

SIR D'ARCY REILLY, CHIEF JUSTICE,

and

MR. JUSTICE C. SUBRAHMANYA AIYAR.

REGULAR APPEAL NO. 24 OF 1938-39.

B. Sitaramachar .. Judgment-debtor 2 .. APPELLANT
(by Messrs U.T. Rangaswamiengar)
D. Shama Rao
P. Raghavendra Rao)

v.

The Government of Mysore
by the Director of Industries in Mysore, Bangalore. .. Decreeholder .. RESPONDENT
(by Mr. Hirle Lakshminarayappa)

Regular appeal against the order dated 28th March 1938 of the District Judge of Bangalore in Execution Case No. 1 of 1934-35.

*Mr.S.Venkata Ranga Iyengar, B.A.,LL.M.,

This appeal coming on for final hearing this day, the Court delivered the following :-

In Original Suit No. 28 of 1930-31 on the file of the District Court of Bangalore the Government obtained a decree against the present Appellant, Defendant 2 in that suit, and others for nearly 8 lakhs of rupees in October 1933. While that suit was pending, an attachment before judgment was obtained

by the Government of a sum which would become due to the Appellant under a paid-up Mysore State Life Insurance Policy for Rs 9,130/- in July 1936, when he would reach the age of 55. After the decree in the suit had been made an execution application was put in by the Government for the payment of the amount of that policy towards the satisfaction of the decree. In that execution case the Appellant contended that under the provisions of section 60 of the Code of Civil Procedure the insured amount could not be attached in execution and so could not be reached by the Government in those execution proceedings and prayed that the attachment should be raised. It happened that that application [illegible] was filed in July 1934, about two years

for the premiums which he had already paid on the policies taken out by him while in service. It is with the amount due on that policy that we are conce in the present case.

I have mentioned that the Appellant's contention in the District Court was that the amount due on that policy could not be attached in execution by reason of the provisions of section 60 of the Code o Civil Procedure. That section provides that variou kinds of property can be attached in execution of decrees; but then it goes on in a long proviso to exempt certain kinds of property from attachment which under the general opening part of the section would be liable to attachment. Clause (p) of that proviso is the one upon which the Appellant relies. In the form it was introduced into the Code in 1925 it runs as follows :- "Where a decree relates to a debt due or contracted by an officer who has insurre his life under the rules in force relating to the official branch of the Mysore State Life Insurance, (1) in the case of insurances effected prior to the date of the passing of this Regulation, the whole of the bonus payable or paid thereunder to the officer or in the event of his death to his nominee or other person or persons entitled to such bonus under the said rules, (2) in other cases, where an officer is bound to insure his life under the aforesaid rules, then the bonus in respect of the compulsory premia payable or aid to such officer or in the event of his death to his nominee or other person or persons entitled to such bonus under the said rules." It will be seen that, when the opening words of that clause are satisfied, certain "bonuses", as they are described, are exempt from attachment. The Appellant's

case is that the amount of Rs 9,130/- due under his paid-up insurance policy is a bonus as set out in b-division (1) of that clause. At first sight might appear very strange that the whole amount e under such a paid-up policy should be described "bonus". "Bonus" in connection with an insurance ount is generally understood to mean something ded to the insured amount. But I think it is ear that the Appellant is right in his contention at "bonus" in the clause of section 60 of the Code Civil Procedure, which we have to consider, means t only something added to the insured amount but

to include the amount insured under a policy issued by the Mysore State Life Insurance Office. In the present instance no question of any bonus in the literal sense comes into consideration at all. The whole 9,130 rupees, with which we are concerned, is the amount insured under the Appellant's paid-up policy. But the word "bonus" in clause (p) of sub-section (1) of Section 60 of the Code clearly includes the whole of that amount.

have only to look at the words of the clause in uestion in this case to see that "debt" is not used n any such restricted sense. The words, as I have ead out, are "a debt due or contracted by an officer" nat means a debt due from or contracted by an officer f it were intended to exclude debts other than debts rising out of a contract, that language would not

whether that is to so we have to look at the Plaint in the suit and the judgment in the suit. It appears that the suit was brought against a private company ranked as Defendant-1, against the Appellant, the Managing Director of that Company, as Defendant-2, against two other directors of the company as Defendants 3 and 4, and against some legal representatives of a deceased director, who was described the ~~Governing~~ Governing Director of the company. The company had been appointed agents for the Government for the sale of sandalwood oil in England and America and under their contract had to remit to the Government the proceeds of the sales, which they effected in those countries, receiving as their remuneration a certain commission. The Government alleged and established in the suit that about 8 lakhs of rupees had been received by the company as agents for the Government in that way and had not been remitted by the company to the Government. In the course of the suit a settlement was reached with Defendants 3 and 4 on the payment of Rs.45,000/- by them. Eventually the learned Judge, who tried the suit, made a decree against the company and Defendant-2 the present Appellant, for the whole of the rest of the claim.

company as a debt. because the Company as agents of the Government had not paid to the Government the amount they had collected for the Government. so fa as the Appellant was concerned it was not a matter of debt at all. What the Government claimed then and what the Government got according to the learned Government Advocate against Defendant-2. the present Appellant, was a decree for damages for the whole of the amount claimed in the suit except the amount paid by Defendants 3 and 4. It is a great difficult in the way of the learned Government Advocate's contention that the word "damages" is not mentioned either in the plaint or in the judgment in the suit.

the ~~company~~ Appellant for the same amount as he made a decree against the company. I think it i very difficult to say that, as the learned Goverr ment Advocate has maintained, that was a suit for damages at all, so far as the Appellant was conce If that was ever the intention of those who draft the plaint, it is very unfortunate that th plain does not say so clearly. In a part of the plaint it is alleged that Defendant-3 and 4 and perhaps it is intendedthe other Directors -- were guilty of negligence. But it is clear that the trial Judge's decree against the Appellant rests upon finding of negligence against him. Then there i an allegation in the plaint that the company and its directors got this agency contract from the Government by misrepresenting their own positior be favourable financially when they were really in difficulties. Such an allegation might have been the basis of a claim for damages for the to of deceit, if it had been proved that a false representation was made to the Government for th purpose of getting the agency contract and that relying on that false representation the Govern- ment entered into the agency contract, which the would not otherwise have done. But, when the su came to be tried by the learned Judge and when t issues were framed, that a spect of the case was not developed. There is no finding in the suit at all that the tort of deceit had been committe by the Appellant or anyone else in that way. Wh has been seriously urged before us by the learne Government Advocate is that it has been found in the suit that the Appellant misappropriated or instigated the misappropriation of a large part

of the amount concerned by getting money received by the company and its agents as the sale-price of the sandalwood oil used for the purposes of th company or its directors instead of being paid to the Government And it appears that the appellan was convicted of criminal breach of trust in connection with part of that amount. But it doe not follow that, when the learned Judge who tried the suit made a decree against the Appellant, he was making a decree for damages for conversion, a the learned Government Advocate has tried to pers

I have mentioned that there is no specific al gation in the plaint that the Government had

whole of the large amount for which a decree was made against him, but that he misappropriate several amounts. At that stage it does not appe to have been even the case for the Government th they could prove against the Appellant misappro- piration or conversion in respect of the whole o the amount for which they claimed and got a deci The trial Judge set out in his judgment some of the evidence, which showed that the Appellant ha taken part in misappropriating some of the sale- proceeds of the sandalwood oil with which the su was concerned. And then, having done that, he stated his conclusion in this way:- "There can no doubt that Defendant-2 was all along acting fraudulently and that he must have used up a lar portion of the sandalwood oil realisations throu Mr. Mavlankar for other purposes for example, financing Essen flour Company..." So the learn Judge's conclusion was that, so far as a case of misappropriation was alleged against the Appellan it had been made out in respect of a large part o the money concerned. But it will be remembered that he went on to make a decree against the - Appellant for the whole of the money concerned except a comparatively small part, which had b_ paid by Defendants 3 and 4. Not only did the lea Judge not use the word "damages" in his judgment or suggest in any way in it that he was making a decree for damages against the Appellant. He did not think it necessary even to set out how he cal- culated what was due from the Appellant as he shou have done, if he had been intending to make a deci for damages for conversion;. Although, this bein a matter of money, he would only have had to make

make calculations. It would at least have been necessary for him to find out what were the amounts out of the total claimed by the Government which the Appellant had misappropriated or had been concerned in misappropriating There was nothing of the sort He found, although his conclusion was that the Appellant had misappropriated some of the total, that the Appellant was liable to a decree for the whole of that total less the comparatively small sum paid by Defendants 3 and 4. He merely took the undisputed accounts filed in the suit relating to the sale of sandalwood oil and found the Appellant liable for the whole of the total um dk shown in those accounts except what have been paid by Defendants 3 and 4. I think that is conclusive that it was not in the learned Judge's mind at all that he was making a decree for damage or tort. Possibly the suit might have been for such damages, and judgment might have been given against the Appellant for such damages. But, so far as I can see, it was never clearly in the minds of those who conducted the suit for the Government that that was the kind of suit they intended to bring against the Appellant. And I think it is clear that it was not in the mind of the learned Judge that he was making a decree of that kind ; nor could he have made a decree for damages so large as the decree against the Appellant on the findings contained in his judgement. I think the only way to understand the learned Judge's disposal of the suit is that he came to the

conclusion

conclusion that the Appellant as the managing director of the company as well as the company must be treated either as the agent of the Government or as trustee for the Government in respect of the amount claimed, and on that basis he made his decree against the Appellant. If that is so he must have been making a decree for a debt, which in his opinion was due from the Appellant to the - Government The finding in the present case of the learned District Judge who made the order now under appeal that this decree does not relate to a debt and therefore it is quite outside the scope of caluse (p) of sub-section (1) of Section 60 of the Code of Civil Procedure appears to me to be

It may be said that the word "officer" means a person who holds an office, and the Appellant held no office under the Government when the debt with which we are concerned became due from him. It will be remembered that he retired from Government service in 1920. The agency for the Government in the matter of selling sandalwood oil in England and America began in 1924. For the Appellant it is contended that the clause is not intended to protect insured persons and those interested in insured amounts only against decrees relating to debts due from officers or contracted by officers while in Government service but that it applies equally to debts due from or contracted by persons, who once had been Government officers, after they ceased to be Government officers. The word 'officer' in that clause it is contended for him, includes an ex-officer as well as an officer actually holding an office. That might seem surprising; but it may be remembered that the word officer" occurs four times in the caluse. It occurs not only in the opening words of the clause but also once under heading (1) and twice under heading (2). Now it is what I have described as heading (1) which applied to the Appellant, and we may look at the way in which the word "officer" is used in that part of the clause, which runs: "in the case of insurances effected prior to the passing [illegible] of this Regulation," i.e. prior to

Legislature in that way. As is well-known, the ordinary age for retirement of Government officers from Government service in this State is 55. Under the rules of the Mysore State Life Insurance Office Government officer does not take out a whole-life insurance, he must take out one under which the - insured amount will be payable when the reache th age of 55. It is a clear inference I think that the age of 55 is fixed for the maturity of such insurance policies because the ordinary age for retirement from Government Service is 55. Now, if the word "officers" in heading (1) of clause (p) of sub-section (1) of Section 60 of the Code had to be interpreted as meaning only an officer still in Government service, that part of th - clause would apply to none of the officers who retire at 55 and have taken out insurance polici aturing at that age.- a very large number of - overnment officers I understand --as it is only nen they have reached 55 and have retired from overnment service that the amounts insured are ayable or paid to them. It is impossible I thin believe that, when this provision was specially ntroduced into the Code to protect insured amount rom being taken in execution of decrees, it was ot intended to protect any officer who received is insured amount after he had passed the age 55 and had retired at that age. That would be ne vast majority of Government officers who took it policies maturing at 55. It would almost be aking nonsense of the clause to interpret it in hat way. I think we must take it that "officer"

ewond officers still in Government service. It
ust be intended to include some persons who hav
een Government officers but are not Government
fficers at the time when the insured amounts ar
aid to them after they have reached the age of
5. The same considerations apply to the inter-
retation of the word "officer" where it appears
or the second time, under heading (2) of the
aluse. Well, it is our duty to interpret the
hole clause in a reasonable way, if we can, so
s to give effect to what appears to be the
ntention of the Legislature in making it. Let
s go back to the opening words of the clause
here a decree relates to a debt due or contrac
an officer who has insured his life.

in all parts of the clause, we get a reasonable and beneficial effect. That is the interpretation which I think we must adopt.

Now [illegible]lant it is admitted is a person who when an officer of the Government insured his life under the rules, and the Rs.9,130/- in question is the insured amount due to him in consequence of life insurance policies taken out by him while in Government service under those rules. Therefore on the interpretation I put on the clause he is a person whose debt is covered by the clause. Under the clause a decree relating to the debt cannot be executed by attaching the amount of his paid-up insurance policy. In my opinion he within the protection of the clause, as he has contended.

In my opinion therefore this appeal must be allowed with costs and the attachment raised.

(Sd.) H. D. C. REILLY,
CHIEF JUSTICE.

MR. JUSTICE C. SUBRAHMANYA AIYAR:-

Amount of costs payable by the Respondent to the Appellant is:

	Appellant Rs.	Respondent Rs.
Court-fee on Memo. of appeal ..	2--0--0	
" power-of-attorney ..	4--0--0	
" Applications ..	2--1--0	
" Process ..	0-10--0	
" Copy of order ..	1--0--0	
Advocate's fee	80--0--0	80-0
Fees for copying	5-13--0	
Special Copying charges ..	4--2--0	
Printing Charges	23-10--0	
Total..	123--4--0	80-0-0

GOVERNMENT OF MYS

ADDRESS FOR TELEGRAMS:
SANDAL
MYSORE
CODE USED: "BENTLEY'S"

SANDALWOOD OIL FACTORY,
Mysore, 21st Septr. 1938

No. 172
Enc. 1. File +
4 copies & letters.

IMMEDIATE.

Recd 5-8-38

FROM S.G. Sastry, Esq.,B.A.,M.Sc.(Lond),
Director,
Sandalwood Oil Factory,
Mysore.

GENERAL SECRETARY.
26 SEP 1938

To M. Venkatesa Iyengar, Esq.,M.A.,
General Secretary to the Government of Mysore,
Bangalore.

SIR,

I have the honour to forward herewith copy of letter Nc D-5.258/30-31 dated 19th September 1938 together with the copie of respective enclosures received from the Director of Industri and Commerce in Mysore stating that summons have been received him from the High Court of Mysore on the Revision Application No.24/38-39 on the file of the High Court which he has served c himself. I also submit the relative file of this office. The Revision application is in respect of the Insurance amount due Mr. B. Sitaramachar on his policy in the Mysore State Life Insu ance Department ordered by the District Judge, Bangalore,to be paid to the Decree Holder in part satisfaction of the decree -ed. The amount of Rs 9,129-8-0/ was received by me from the ment Advocate under cover of his letter No. 146 dated 15th A 1938 which has been remitted into the State Huzur Treasury c 17th of August 1938.

I how request further instructions in the matter.

I have the honour to be,
Sir,
Your most obedient servant,

Director.

2122/23
P83

Mirle N. Lakshminaranappa, Esq.,
B.A., LL.B.,
Government Advocate.

GOVERNMENT ADVOCATE'S CHAMBERS,
PUBLIC OFFICES,
Bangalore, ... 27th Sept. 1938.

D. O. No. 2824 Exe. Dte. File (D. No. 2019/P)

CONFIDENTIAL.

Dear Mr. Subrahmanya Iyer,

Re: Regular Appeal No. 24/38-39 on the file of the High Court of Mysore, (B. Sitaramachar vs. The Government of Mysore) Application for condonation of the delay in filing the appeal.

...

Mr. S. Ganapathi Iyer, Clerk of your office, telephoned to me from Mysore yesterday night, to appear in the above case. - I had already been watching that case in anticipation of a formal letter from the Government.

2. From the affidavit filed by the appellant's learned - Advocate it is clear that the delay was due to his laches and not to the client's. Unless the truth of the contents of the learned Advocate's Affidavit is disputed, I cannot think of any way of - opposing the condonation of the delay which has already been made ex-parte, impliedly, by the issue of notice to the Respondent.

3. I requested Mr. Ganapathi Iyer over the 'phone to obtain the instructions through you on the specific point whether I should dispute or whether I should not dispute the correctness of the counsel's affidavit. Mr. Ganapathi Iyer's reply over the 'phone, as it was conveyed to me to-day while I was in Court, by my clerk, was that I need not dispute the truth of the affidavit, - but yet I should oppose the condonation of the delay. It means taking up the position in law that even though the client is not at fault, he has got to suffer for the laches of his lawyer - a position which is, I may state with respect, very weak, and one not at all likely to be countenanced by the Court. I am not sure if the instructions have been properly conveyed to me. Awaiting further instructions in the matter whether on the whole it will not be more expedient to give in and take credit for it, rather than to put in an opposition which is almost certain to be un-

successfub,

unsuccessful,___ I shall take an adjournment till Dasara and act according to the orders of Government.

2. The file relating to the matter (received from your office here) is herewith sent for reference and - return.

Yours sincerely,

Narasimhappa

C. Subrahmanya Iyer, Esq., B.A., B.L.,
Addl. Secretary to Government,
(Camp) MYSORE.

GENERAL AND REVENUE SECRETARIAT,

Dated, Bangalore, 11th October, 1938

Dear Mr.Lakshminaranappa,

Subject:- R.A.No.24/38-39 on the file of the High Court of Mysore (B.Sitaramachar VS. Government)

With reference to your D.O.No.284 dated 27th September 1938, I am desired to request you to be good enough to meet the Additional Secretary to Government, in his Office Chambers, during Office hours on any day to discuss the above case.

Yours sincerely,

BKR

Mirle N.Lakshminaranappa, Esq, M.A., LL.B.,
Government Advocate ,
Bangalore.

Appendix F G—1]

SUBJECT..... Immediate & Confidential

Section Law

File No.

Serial No.

Diary No. of letter replied to .....

O.No. P1740.

General and Revenue Secretariat

( )

the *193*

Subject:— R.A. No. 24/38-39 on the file of the High Court of Mysore (B. Sitaramachar Vs Govt.)

Date of issue.... 11.10.38

Dear Mr. Lakshminarayappa,

Signed by Mr. BKR.

With reference to your D.O. No 284 dated 27.9.38 I am desired to request you to be good enough to meet the Additional Secretary to Govt. in his office Chambers, during office hours, on any day to discuss the above case.

Yours Sincerely,

BKR

List of enclosures.....

Copied by.....

To

Sirle N. Lakshminarayappa Esq. M.A. LL.B.

Examined by .....

Govt. Advocate

WD 0278—GPB—30,000—4-3-38

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193*

Date of issue 16.10.38

Signed by Sm. BKR

List of enclosures.....

Copied by .....

Examined by.....

Section Law

File No.

Serial No.

No. P1833/Secy. one file of papers

To

The Govt Advocate

Subject:- R. A. No 24/38-39 on the file of the High Court of Mysore (B. Sitaramachar Vs Govt.).

Sir,

With reference to your letter no 284, dated 27th Sept. '38 and in continuation of discussions ~~with the Govt Secy,~~ personal ~~instructions~~ in regard to the above case, I am directed to forward herewith as desired, for your reference and return the entire papers in regard

the above received fm

Dir: g S.O.7.

I have etc

ISKR

for Addl Secy.

irle N. Lakshminaranappa, Esq., B.A., LL.B.,
Government Advocate.

REV. SECRETARIAT
25 OCT 1938

GOVERNMENT ADVOCATE'S CHAMBERS,
PUBLIC OFFICES,
Bangalore, 25th Oct. 1938.

D. O. No. 328

Confidential.

My dear Mr. Subrahmanya Aiyar,

Re: Regular Appeal No. 24 of 1938-39 on the file of the High Court of Mysore, (B. Sitaramachar vs. The Govt. of Mysore).

You may please remember that in response to the D. O. letter of the Assistant Secretary, No. P. 1740, dated the 11th October 1938, I met you in your chambers and discussed the matter. I believe it was understood that while it was not possible to deny the truth of the contents of the affidavit of the Appellant's Counsel, it was also equally difficult to admit their truth as Government had no information on the matter; and that we had merely to take our chance of the High Court accepting the view that the difficulty of the counsel to file the appeal in time could not be the difficulty of the client, a chance which as both of us knew was very remote.

2. The case came off on the 20th instant. As I found that no formal orders of Government empowering me to appear for them had been received, I moved for an adjournment for the purpose of filing the appearance after I received the order from the Government.

3. The case is in the ready list for day after to-morrow.

4. I shall thank you if you will kindly obtain early the orders of Government for my appearance.

with regards,

Yours sincerely,

Mark. Narasimhan
Mar encapp

C. Subrahmanya Aiyar, Esq., B.A., B.L.,
Additional Secretary to Government,
Bangalore.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAIA OF MYSORE

Read:-

Letter No. 172, dated 21st September 1938 from the Director of Sandalwood Oil Factory forwarding copy of letter from the Director of Industries and Commerce stating that notices have been received by him from the High Court of Mysore in Regular Appeal No. 24/38-39 (B. Sitaramachar Vs. Government of Mysore) in respect of the -- insurance amount due to Mr. B. Sitaramachar on his policy in the Mysore State Life/Insurance Department ordered by the District Judge, Bangalore to be got and paid to the Decree-holder (Director of Industries and Commerce) in part satisfaction of the decree obtained, and requesting instructions in the matter.

ORDER NO. PC974-7 Law S-8-38-2

Dated, Bangalore, 26th October 1938.

Sanction is accorded to the defence of the appeal (R.A.24/38-39 on the file of the High Court of Mysore), the services of the Government Advocate being engaged for the purpose.

B.K. Ramachandra Iyengar

Additional Secretary to Government.

To

The Director of Sandalwood Oil Factory in Mysore.
The Director of Industries and Commerce in Mysore.
The Government Advocate.
The Comptroller to Government.

G. R. S. App. F VI—G 2]

SUBJECT .....

.....

.....

Diary. No of letter replied to .....

Section Law

File No. 58-38

Serial No. 2

General and Revenue Secretariat

( )

the *193*

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue..... 26.10..... 193 8

Signed by ..... Mr. BKR

Read— Letter no 172, dated 21st Sept 1938 from the Dirr of Sandalwood Oil Factory forwarding copy of letter from the Dirr of Industries and Commerce stating that Notices have been received by him ~~Order thereon No.~~ from the High Court of Mysore in Regular Appeal No. 24/38-39 (B. Sitaramachar vs Govt of My in respect of the insurance amount due to Mr B. Sitaramachar on his police

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

Mysore
Department ordered by the
Dist. judge, Bijapur to be
and
got paid to the Decree hol
Dir^v of 1 and c) in par
tisfaction of the decree
obtained, and requesting
instructions in the matter.

Order No. P 1974

Sanction is accorded
to the defence of the appeal
(R.A. 24/38-39 on the file
of the High Court of Mysore)
& services of the Govt Advo
cate engaged for the purpos
e.

BDCR
25-10 Addl Secy:

)VERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 8th November 1938.

No. P2239

From

The Additional Secretary to the Government of His Highness the Maharaja of Mysore.

To

The Director of Sandalwood Oil Factory,
Mysore.

SUBJECT. - R.A. No. 24/38-39 on the file of the High Court of Mysore (B. Sitaramachar Vs. Government).

Sir,

With reference to your letter No. 227, dated 3rd November 1938 requesting for return of your papers in regard to the above case, I am directed to state that the entire papers have been sent to the Government Advocate for reference in the above case with this office letter No.P. 1833, dated 14th October 1938.

I have the honour to be,
Sir,
Your most obedient servant,

For Additional Secretary to Government.

Section Law

File No.

Serial No.

Diary No. of letter replied to .....

No. P2239

To The Dir of S.O.T.

General and Revenue Secretariat

( )

the *193*

Subject :— R.A. No. 24/38-39 on the file of the High Court of Mysore (B. Sitaramachar Vs Govt)

Date of issue 9/11/38

Sir,

Signed by Dr. BKR

With reference to your letter no. 227, dated 3rd NOV: '38 requesting for return of your papers in regard to the above case, I am directed to state that the entire papers have been sent to the Govt Advocate for reference in the above case vide this office letter no. P 1833, dated 14-10-38.

List of enclosures.....

I have etc!

BKR

Copied by.....

Examined by.....

78—GPB—30,000—4-3-38

for Addl Secy,

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 12th December *1938.*

Law 58-38-4

FROM

MIRLE N. LAKSHMINARANAPPA, ESQ., B.A., LL.B.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

13 DEC 1938

To

The Additional Secretary to the Govt.
of H. H. the Maharaja of Mysore,
Bangalore.

SIR,

I have the honor to return herewith, the entire file of papers (of the Office of the Director of Sandalwood Oil Factory, Mysore) received with your letter No. P. 1838, dated the 14th October 1938, for reference in connection with Regular Appeal No. 24 of 1938-39 on the file of the High Court of Mysore, (B. Sitaramachar vs. The Government of Mysore).

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 3074/Genl Records *Dated, Bangalore,* 16th December 1938

From Additional
The Secretary to the Government of His Highness the Maharaja of Mysore.

To

The Director of Sandal Oil Factory,
Mysore.

Sir, Subject:- R.A.No.24/38-39 on the file of the High Court of Mysore (B.Sitaramachar Vs Government)

In continuation of this office letter No.P.2239, dated 9th November 1938 in regard to the above case, I am directed to forward herewith the entire records since received from the Government Advocate which were sent to this office with your letter No.172 dated 21st September 1938.

I have the honor to be,
Sir,
Your most obedient servant,

BHR

For Additional Secretary to Govt.

Appendix F G—1]

SUBJECT .....

.....

.....

Section Law

File No. 58-38

Serial No.

Diary No. of letter replied to.....

No. P3074/Records

To

The Dirr of S.O.T.

General and Revenue Secretariat

( )

the *193*

Subject:- R.A. No 24/38-39 on t
file of the High Court of Mysor
(B. Sitarama Char Vs Govt)

Date of issue 16/12/38

Signed by Mr BKR

Sir,

In Continuation of this
office letter no. P 22-39, dated
9th Nov. 1938 in regard to t
above case, I am directed t
forward herewith the entire
records since received from the
Govt Advocate which were sent to this
office with your letter no. 172
dated 21st Sept. 1938.

ist of enclosures.....

opied by .....

Have etc

BKR

for Addl Secy

Examined by.....

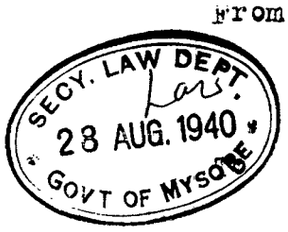
1384/40

In reply please refer to
No. 154

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore,.....27th...August..... 1940

From



The Government Advocate
in Mysore, Bangalore.

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Law Department, Bangalore.

Sir,

Re: Regular Appeal No.24/38-39 on the file of - the High Court of Mysore, (B. Sitaramachar vs. The Government of Mysore).

With reference to Government Order No. P. 1974-7/ Law. 58-38-2, dated the 26th October 1938, I have the - honor to state that the hearing of the above appeal was begun on Friday the 23rd instant, and after the argument was concluded yesterday, it was allowed with costs, raising the attachment over the Insurance Policy amount due to the Judgment-debtor who had insured his life in the - Mysore State Life Insurance - Official Branch.

2. A copy of the Judgment has been applied for and the same will be sent to you as soon as it is received in this office.

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

1386 file

Mr. Mirle N. LAKSHMINARANAPPA, B.A., LL.B.,
Government Advocate.

GOVERNMENT ADVOCATE'S CHAMBERS,
PUBLIC OFFICES,

D. O. No. 168

Bangalore, ...27th Aug.....1940.

Confidential

Dear Sir,

Re: Regular Appeal No. 24 of 1938-39 on the file of the High Court of Mysore, ~~(Kar~~ (B. Sitaramachar vs. The Government of Mysore).

In continuation of this office letter No. 154, - dated this day on the above subject, I write to state that the effect of the order of the Court is that Insurance money cannot be recovered in execution of the decre through the Civil Court. But, it leaves untouched the right of the Government to deduct this amount due to - them in part realization of the enormous sum now owed - by the Judgment-debtor of which this is not a hundredth.

2. The Government have this right under Rule 23 of the Rules,-vide: page 10 of the book containing the Rules for the Mysore State Life Insurance - Official Branch, - (1937 Edition), which was in existence at the time the Judgment-debtor effected the insurance. (G. O. No. Fl. 5433-5/G.F.29-23-14, dated the 1st April 1924 mentioned on the said page merely refers to the subsequent modifications regarding the other parts of the Rule not affecting this right). Therefore, the contract of Insurance with the Judgment-debtor effected under the Rule, entitles the Government to this deduction in their favour. But a restriction has been since placed upon the kind of deduction in G. O. No. Fl.3644-6/G.F. 78-23-2, dated the 7th ~~K~~ January 1924, vide: the extract from the ~~said~~ G. O. printed on page 45 of the book mentioned above. This is merely an interpretation by one party (Government) to the contract - to which there has been no assent by the other party - (viz., the Judgment-debtor) who cannot therefore contend that he is entitled to its benefit since the contract has

not been validly modified. Besides, the Rule is meant to apply to officers, mostly to those not in active service - but on the retired list, of which the judgment-debtor cannot be one since his pension was withdrawn for bad conduct. - Equity, justice and law are all, in my opinion, in favour making the deduction

The question of not paying respect to the Order of the High Court does not arise in the case. I mentioned this point to the District Court after I took charge of this case and to the High Court during the hearing of the appeal. This point was not adjudicated upon or even referred to on the ground that they were concerned not on the general question of the Government's right to deduction under the said Rule 23, but on the specific point whether the Civil Court could attach the amount in the face of clause (p) of Section 60 (1) of the Code of Civil Procedure. Therefore,

Bank,(vide: 11 Mysore Law Journal, 333 and 17 Mysore Chief Court Reports, 121). I do not believe exemption continues for compulsory deposits in British India up to that point. It stops as soon as it passes from the paying - authority to the person entitled to receive it. It is - rather difficult to justify this further extension in - Mysore, which is also a matter for legislative amendment.

Yours sincerely,

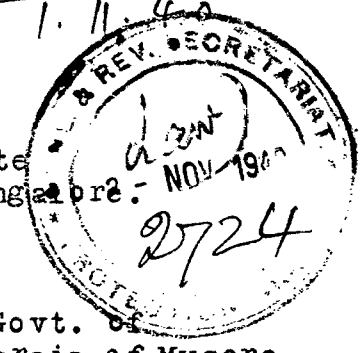
Mysore Lakshminarayanappa

In reply please refer to
No. 924

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 29th October 1940.

1.11.40



From

The Government Advocate
in Mysore, Bangalore.

The Secretary to the Govt. of
H. H. the Maharaja of Mysore,
Law Department, Bangalore.

Sir,

In continuation of this office letter No 154, dated the 27th August 1940, I have the honor to forward herewith, for the information of Government, a copy of the Judgment (with Memo. of costs) passed in Regular Appeal No. 24 of 1938-39 on the file of the High Court of Mysore, (B. Sitaramachar vs. The Government of Mysore).

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.